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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	No. 00-cv-7409 CAS (RNBx)
)	Hon. Christina A. Snyder
Plaintiff,)	
)	
v.)	CONSENT DECREE
)	
)	
ADAM BROS. FARMING, INC.,)	
ICEBERG HOLDINGS, L.P.,)	
RICHARD ADAM, PETER ADAM,)	
KIERAN ADAM, and DOMINIC ADAM,)	
Defendants.)	

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1 as provided in 33 U.S.C. § 1319(d);

2 WHEREAS, Defendants have each filed an Answer denying the
3 allegations in the Complaint, including specifically that any of
4 them violated the CWA or that the Site, including the Disputed
5 Area, contained "waters of the United States" within the meaning
6 of the CWA;

7 WHEREAS, this Consent Decree is intended to constitute a
8 complete and final settlement of the United States' claims under
9 the CWA that were or could have been asserted in the Complaint
10 regarding the Site and the Disputed Area;

11 WHEREAS, the United States and Defendants agree that
12 settlement of this case is in the public interest and that entry
13 of this Consent Decree is the most appropriate means of resolving
14 the United States' claims under the CWA against Defendants in
15 this case; and

16 WHEREAS, the Court finds that this Consent Decree is a
17 reasonable and fair settlement of the United States' claims
18 against Defendants in this case, and that this Consent Decree
19 adequately protects the public interest in accordance with the
20 CWA and all other applicable federal law.

21 THEREFORE, before the taking of any testimony upon the
22 pleadings, without further adjudication of any issue of fact or
23 law, and without any admission of liability by Defendants,
24 including, specifically, that there were any adjacent wetlands on
25 the Site as alleged in the Complaint, and upon consent of the
26 parties hereto by their authorized representatives, it is hereby
27 ORDERED, ADJUDGED and DECREED as follows:

1 transfer of any interest in the Restoration and Preservation Area
2 (as denoted in Appendix A hereto) shall not alter or relieve
3 Defendants of their obligation to comply with all of the terms of
4 this Consent Decree. At least fifteen (15) days prior to the
5 transfer of ownership or other interest in the Restoration and
6 Preservation Area (or any parcel that includes any portion of the
7 Restoration and Preservation Area), Defendant Iceberg Holdings,
8 L.P. shall provide written notice and a true copy of this Consent
9 Decree to the transferee and shall simultaneously notify EPA and
10 the United States Department of Justice in writing, at the
11 addresses specified in Section IX below, that such notice has
12 been given. As a condition to any such transfer, Defendant
13 Iceberg Holdings, L.P. shall reserve all rights necessary to
14 comply with the terms of this Consent Decree and shall require
15 the transferee to include compliance with the terms of the
16 Consent Decree as a condition in any subsequent deed or other
17 legal instrument by which transferee divests itself of any
18 interest in Santa Barbara County Assessor Parcel Numbers 111-240-
19 05, 111-240-07, 111-240-20, and/or 111-240-24, to the extent the
20 Restoration and Preservation Area is within such parcel. Nothing
21 in this provision shall be construed as giving Plaintiff,
22 including any agency of the United States, the authority to
23 approve or disapprove of any transfer. Nothing in this Consent
24 Decree shall prevent Defendant Iceberg Holdings, L.P. from
25 obtaining appropriate commitments, including but not limited to
26 indemnification agreements, from any transferee that would
27 obligate transferee to comply with this Consent Decree or pay any
28 costs or fines associated with this Consent Decree.

1 Notwithstanding the first sentence of this paragraph, in the
2 event of a transfer in ownership, the obligation to comply with
3 the Restoration and Preservation Plan (contained in Appendix A)
4 shall run with the land in perpetuity.

5 **III. SCOPE OF CONSENT DECREE**

6 6. Upon entry of this Consent Decree:

7 A. the cease and desist letter dated January 29,
8 1999 (Case No. 985036800-JEM) from the Corps of Engineers shall
9 be deemed withdrawn and have no further effect; and

10 B. the Administrative Order dated August 5, 1999
11 from EPA shall be deemed withdrawn and have no further effect.

12 7. This Consent Decree shall constitute a complete and
13 final settlement of all civil claims for injunctive relief and
14 penalties asserted in the Complaint or that could have been
15 asserted in the Complaint under the CWA based upon the facts
16 alleged in the Complaint as well as all administrative claims
17 that were or could have been brought under the CWA based on the
18 facts alleged in the complaint. .

19 8. It is the express purpose of the parties in entering
20 this Consent Decree to further the objectives set forth in CWA
21 Section 101, 33 U.S.C. § 1251. All obligations in this Consent
22 Decree or resulting from the activities required by this
23 Consent Decree shall have the objective of maintaining full
24 compliance with, and to further the purposes of, the CWA. This
25 paragraph shall not be construed to expand the scope of any
26 specific obligations contained in this Consent Decree.

27 9. Defendants' obligations under this Consent Decree are
28 as follows:

1 A. With respect to payment of any monetary amounts
2 for civil penalty and offsite mitigation, the obligations shall
3 be joint and several as to all Defendants;

4 B. With respect to compliance with the Restoration
5 and Preservation Plan, the obligations shall be joint and several
6 as to Adam Bros. Farming, Inc., Iceberg Holdings, L.P., Peter
7 Adam, Dominic Adam and Kieran Adam;

8 C. With respect to Stipulated Penalties described in
9 Section VIII below, the obligation shall be joint and several
10 based on Defendants' obligations as outlined in subparagraphs (A)
11 and (B) of this paragraph;

12 D. Any obligations imposed on "Defendants" in this
13 Consent Decree and not specifically provided for in this
14 paragraph shall be joint and several as to all Defendants.

15 10. Except as in accordance with this Consent Decree,
16 Defendants and Defendants' agents, successors and assigns are
17 enjoined from discharging any pollutant into the Restoration and
18 Preservation Area, unless such discharge complies with the
19 provisions of the CWA, its implementing regulations, and the
20 terms and conditions of the Restoration and Preservation Plan.

21 11. The parties acknowledge that Nationwide Permit 32,
22 found at 67 Fed. Reg. 2020, 2084 (Jan. 15, 2002), authorizes any
23 fill that was placed on the Site as of the date of this Consent
24 Decree to remain in place, subject to the conditions of that
25 Nationwide Permit and this Consent Decree. The parties further
26 acknowledge that Nationwide Permit 32 authorizes the discharge of
27 dredged or fill material pursuant to the terms of this Consent
28 Decree, specifically including the Restoration and Preservation

1 Plan (Appendix A hereto) and Paragraphs 21 through 23 below,
2 subject to the conditions of that Nationwide Permit and this
3 Consent Decree. These acknowledgments are not and shall not be
4 construed as an implicit or explicit admission by Defendants
5 that, at any time, they discharged pollutants into waters of the
6 United States in violation of the CWA.

7 12. This Consent Decree is not and shall not be interpreted
8 to be a permit or modification of any existing permit issued
9 pursuant to Sections 402 or 404 of the CWA, 33 U.S.C. §§ 1342 or
10 1344, or any other law.

11 13. This Consent Decree does not affect or relieve
12 Defendants of any responsibility to comply with applicable
13 federal, state, or local law, regulation or permit.

14 14. Except as provided in Paragraph 15 below, this Consent
15 Decree in no way affects the rights of the United States as
16 against any person not a party to this Consent Decree.

17 15. The United States reserves any and all legal and
18 equitable remedies available to enforce the provisions of this
19 Consent Decree. The United States shall have the right to
20 enforce the obligations of the Preservation and Restoration Plan
21 against subsequent owners of any portion of the Restoration and
22 Preservation Area. This right shall survive termination of this
23 Consent Decree and shall run with the land in perpetuity.

24 16. Nothing in this Consent Decree shall constitute an
25 admission of fact or law by any party. Specifically, but without
26 limitation, (a) the reference to any Nationwide Permit shall not
27 be construed as an admission of any fact or law as to the nature
28 of the activities undertaken on the Site or whether such

1 activities are or were subject to regulation under the CWA; and
2 (b) this Consent Decree does not constitute evidence of any
3 finding, agreement, admission or other basis to conclude that
4 there were "waters of the United States" on the Site at any time
5 within the meaning of the CWA as alleged in the Complaint. The
6 parties further agree that this Consent Decree shall not be
7 admissible in any proceeding as evidence of the existence of
8 "waters of the United States" as alleged in the Complaint.

9 **IV. SPECIFIC PROVISIONS**

10 **CIVIL PENALTIES**

11 17. Defendants shall pay a civil penalty to the United
12 States in the amount of Two Hundred Thousand Dollars (\$200,000)
13 within sixty (60) days of entry of this Consent Decree.

14 18. Defendants shall make the above-referenced payment by
15 FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the
16 U.S. Department of Justice account in accordance with current
17 electronic funds transfer procedures, referencing U.S.A.O. file
18 number 2000V01872, EPA Region IX and the DOJ case number 90-5-1-
19 1-05744. Payment shall be made in accordance with instructions
20 provided to the Defendants by the Financial Litigation Unit of
21 the United States Attorney's Office for the Central District of
22 California. Any payments received by the Department of Justice
23 after 4:00 P.M. (Eastern Time) will be credited on the next
24 business day.

25 19. Upon payment of the civil penalty required by
26 Paragraph 17 above, Defendants shall provide written notice to
27 EPA and the United States Department of Justice, at the addresses
28 specified in Section IX below, that such payment was made.

1 20. Civil penalty payments pursuant to this Consent Decree
2 (including Stipulated Penalty payments under Section VIII below)
3 are penalties within the meaning of Section 162(f) of the
4 Internal Revenue Code, 26 U.S.C. § 162(f), or of 26 C.F.R.
5 § 1.162-21, and are not tax deductible expenditures for purposes
6 of federal law.

7 **RESTORATION, PRESERVATION, AND MITIGATION**

8 21. Defendants have agreed to undertake certain restoration
9 and preservation activities on the Site, as well as provide
10 funding for mitigation activities off-site. With respect to on-
11 site activities, Defendants shall comply with the terms of the
12 Restoration and Preservation Plan attached as Appendix A hereto
13 and incorporated herein by reference. The Restoration and
14 Preservation Area identified in Exhibit 1 to Appendix A shall be
15 preserved in perpetuity, in accordance with the Restoration and
16 Preservation Plan. The parties intend that the obligations in
17 this Paragraph shall run with the land in perpetuity. In
18 furtherance of this intent, Defendant Iceberg Holdings, L.P.
19 shall, within fifteen (15) days of entry of this Consent Decree,
20 record a certified copy of this Consent Decree, including all
21 Appendices, for Santa Barbara County Assessor Parcel Numbers 111-
22 240-05, 111-240-07, 111-240-20, and 111-240-24 with the Recorder
23 of Deeds Office, in Santa Barbara County, California.
24 Thereafter, each deed, title, or other instrument conveying an
25 interest in the Restoration and Preservation Area identified in
26 Exhibit 1 to Appendix A shall contain a notice stating that the
27 parcel containing the Restoration and Preservation Area is
28 subject to this Consent Decree, including all Appendices, and

1 shall reference the recorded location of the Consent Decree and
2 any restrictions applicable to such parcel under this Consent
3 Decree, provided, however, that none of the Defendants shall be
4 obligated to take any action to enforce this obligation against
5 subsequent transferees' transfer of any parcel containing any
6 portion of the Restoration and Preservation Area, nor shall
7 Defendants be liable if such subsequent transferees fail to
8 include the notice of such transfer, unless such transferee is a
9 signatory to this Consent Decree.

10 22. Within thirty (30) days of entry of this Consent
11 Decree, Defendants shall pay two hundred thousand dollars
12 (\$200,000.00) to the Land Conservancy of San Luis Obispo County
13 for the purposes of carrying out the first phase of the off-site
14 mitigation identified in Appendix B hereto. No later than
15 December 1, 2005, Defendants shall pay an additional seven
16 hundred and fifteen thousand dollars (\$715,000) to the Land
17 Conservancy of San Luis Obispo County for the purposes of
18 carrying out the second phase of the off-site mitigation
19 identified in Appendix B hereto. Upon each such payment,
20 Defendants shall notify EPA and the United States Department of
21 Justice in writing, at the addresses specified in Section IX
22 below, that such payment was made in accordance with this
23 paragraph. All payments made under this paragraph are made as
24 part of the injunctive relief under Section 309(b) of the CWA,
25 for the compensatory purpose of off-site mitigation and
26 remediation, and are not being made in lieu of a civil penalty or
27 in settlement of Defendants' actual or potential liability for
28 any civil or criminal penalty under the CWA or otherwise,

1 pursuant to a supplemental Environmental Project, or as a penal
2 sanction.

3 23. In consideration of the environmental benefits of the
4 restoration, preservation and mitigation provisions of Paragraphs
5 21 and 22 above, and to resolve without further litigation the
6 dispute between the parties regarding whether the Site contains
7 "waters of the United States":

8 A. Defendants may, during the life of this Consent
9 Decree, pursuant to Nationwide Permit 32, and without any
10 additional general or individual permit:

11 1. undertake any and all activities on the Site
12 outside the Restoration and Preservation Area that are
13 appropriate to prepare, maintain, and operate the Site for
14 farming and production of food or other crops. These
15 activities may include land leveling, grading, filling, the
16 installation and operation of surface water and/or tile
17 drains, plowing, seeding, cultivating, minor drainage, and
18 harvesting. Nothing in this paragraph is intended to
19 prohibit Defendants, after the termination of the Consent
20 Decree, from engaging in further preparation and maintenance
21 activities to improve farming operations on the Site outside
22 the Restoration and Preservation Area in accordance with the
23 CWA.

24 2. replace any portion of the channel (described
25 by the parties during this litigation as part of the South
26 Channel or Tributary 1) that is not surveyed on Exhibit 1 to
27 Appendix A but that is located east of points 253/285 on
28 Exhibit 1, with an underground drainage pipe for irrigation

1 return flow, provided that such pipe is covered with soil;
2 and

3 B. Following termination of this Consent Decree, then
4 on-going farming activities may continue outside the Restoration
5 and Preservation Area, subject to CWA Section 404(f), 33 U.S.C.
6 § 1344(f), and 33 C.F.R. § 323.4. This provision shall not be
7 construed as placing any limitation on activities on the Site
8 that are not otherwise subject to the CWA.

9 **V. RETENTION OF RECORDS AND RIGHT OF ENTRY**

10 24. Until five years after termination of this Consent
11 Decree, Defendants shall preserve and retain all records and
12 documents now in their possession or control or which come into
13 their possession or control that document compliance with the
14 provisions of Appendix A, regardless of any corporate retention
15 policy to the contrary. Defendants shall also instruct their
16 contractors and agents to preserve all documents, records, and
17 information of whatever kind, nature or description relating to
18 the provisions of Appendix A until five years after termination
19 of this Consent Decree.

20 25. At the conclusion of the document retention period,
21 Defendants shall notify EPA and the United States Department of
22 Justice in writing, at the addresses specified in Section IX
23 below, at least ninety (90) days prior to the destruction of any
24 such records or documents, and, upon request by the United
25 States, Defendants shall deliver any such records or documents to
26 EPA. The Defendants may assert that certain documents, records
27 and other information are privileged under the attorney-client
28 privilege or any other privilege recognized by federal or state

1 law. If the Defendants assert such a privilege, they shall
2 provide the United States with the following: (1) the title of
3 the document, record, or information; (2) the date of the
4 document, record, or information; (3) the name and title of the
5 author of the document, record, or information; (4) the name and
6 title of each addressee and recipient; (5) a description of the
7 subject of the document, record, or information; and (6) the
8 privilege asserted by Defendants. However, no documents, reports
9 or other information required to be created or generated pursuant
10 to the Consent Decree shall be withheld on the grounds that they
11 are privileged.

12 26. A. Until termination of this Consent Decree, the
13 United States and its authorized representatives and contractors
14 shall have authority at reasonable times to enter the Defendants'
15 premises to:

16 1. Monitor the activities related to this
17 Consent Decree;

18 2. Verify any data or information submitted to
19 the United States relating to compliance with this
20 Consent Decree;

21 3. Obtain samples in the Restoration and
22 Preservation Area relating to compliance with this
23 Consent Decree;

24 4. Inspect and evaluate Defendants' compliance
25 with the Restoration and Preservation Plan under this
26 Consent Decree; and

27 5. Inspect and review any records required to be
28 kept under this Consent Decree.

1 B. This provision of this Consent Decree is in
2 addition to, and in no way limits or otherwise affects, the
3 statutory authorities of the United States to conduct
4 inspections, to require monitoring, and to obtain information
5 from the Defendants as authorized by law.

6 **VI. DISPUTE RESOLUTION**

7 27. Any dispute that arises with respect to the meaning or
8 requirements of this Consent Decree shall be, in the first
9 instance, the subject of informal negotiations between the United
10 States and Defendants affected by the dispute to attempt to
11 resolve such dispute. The period for informal negotiations shall
12 not extend beyond thirty (30) days beginning with written notice
13 by one party to the other affected party or parties that a
14 dispute exists, unless agreed to in writing by those parties. If
15 such dispute between the United States and Defendants cannot be
16 resolved by informal negotiations, then the position advanced by
17 the United States shall be considered binding unless, within
18 thirty (30) days after the end of the informal negotiations
19 period, the Defendants file a motion with the Court seeking
20 resolution of the dispute. Such motion shall set forth the
21 nature of the dispute and a proposal for its resolution. The
22 United States shall have thirty (30) days to respond to the
23 motion and propose an alternate resolution. In resolving any
24 such dispute, the Defendants shall bear the burden of proving by
25 a preponderance of the evidence that the United States' position
26 is not in accordance with the terms and conditions of this
27 Consent Decree.

28 28. If the United States believes that a dispute would pose

1 or increase a threat of imminent and substantial endangerment to
2 the environment or to the public health or welfare, it may move
3 the Court for a resolution of the dispute prior to the expiration
4 of the thirty (30) day period for informal negotiations. Such
5 motion shall state in particular all factual bases upon which it
6 is based and the proposed resolution. The Defendants shall have
7 fourteen (14) days to respond to the motion and propose an
8 alternate resolution, unless that time is extended by the Court.
9 In any such motion, the United States shall have the burden of
10 proving a need for expedited dispute resolution; the Defendants
11 shall bear the burden of proving by a preponderance of the
12 evidence that the United States' position is not in accordance
13 with the terms and conditions of this Consent Decree.

14 29. The filing of a motion asking the Court to resolve a
15 dispute shall not extend or postpone any obligation of Defendants
16 under this Consent Decree, except as provided in Paragraph 37 below
17 regarding payment of Stipulated Penalties.

18 **VII. FORCE MAJEURE**

19 30. Defendants shall perform the actions required under
20 this Consent Decree within the time limits set forth or approved
21 herein, unless the performance is prevented or delayed solely by
22 a Force Majeure event. A Force Majeure event is defined as any
23 event arising from causes beyond the control of Defendants,
24 including their employees, agents, consultants and contractors,
25 which could not be overcome by due diligence and which delays or
26 prevents the performance of an action required by this Consent
27 Decree within the specified time period. A Force Majeure event
28 does not include, inter alia, increased costs of performance,

1 changed economic circumstances, changed labor relations, normal
2 precipitation or climate events, changed circumstances arising
3 out of the sale, lease or other transfer or conveyance of title
4 or ownership or possession of the Site, or failure to obtain
5 federal, state or local permits.

6 31. If Defendants believe that a Force Majeure event has
7 affected Defendants' ability to perform any action required under
8 this Consent Decree, Defendants shall notify EPA and the United
9 States Department of Justice in writing, at the addresses
10 specified in Section IX below, within seven (7) calendar days
11 after the event. Such notice shall include a discussion of the
12 following:

- 13 A. what action has been affected;
- 14 B. the specific cause(s) of the delay;
- 15 C. the length or estimated duration of the delay; and
- 16 D. any measures taken or planned by the Defendants to
17 prevent or minimize the delay and a schedule for
18 the implementation of such measures.

19 Defendants may also provide to the United States any additional
20 information that they deem appropriate to support their
21 conclusion that a Force Majeure event has affected their ability
22 to perform an action required under this Consent Decree. Failure
23 to provide timely and complete notification to the United States
24 shall constitute a waiver of any claim of Force Majeure as to the
25 event in question.

26 32. If the United States determines that the conditions
27 constitute a Force Majeure event, then the deadline for the
28 affected action shall be extended by the amount of time of the

1 delay caused by the Force Majeure event. Defendants shall
2 coordinate with EPA to determine when to begin or resume the
3 obligations that had been affected by the Force Majeure event.

4 33. If the parties are unable to agree that the conditions
5 constitute a Force Majeure event, or that the length of time for
6 fulfilling the provision of the Consent Decree at issue should be
7 extended, any party may seek a resolution of the dispute under
8 the procedures in Section XIII below.

9 34. Defendants shall bear the burden of proving the
10 existence of a Force Majeure event as defined in Paragraph 30
11 above and the number of days of delay in compliance that were
12 caused by such Force Majeure event.

13 **VIII. STIPULATED PENALTIES**

14 35. After entry of this Consent Decree, if Defendants fail
15 to timely fulfill any requirement of the Consent Decree
16 (including Appendix A), the Defendants shall pay a Stipulated
17 Penalty to the United States for each violation of each
18 requirement of this Consent Decree as follows:

- 19 A. \$1000.00 per day for Day 1 up to and including Day
20 30 of non-compliance;
21 B. \$2,000.00 per day for Day 31 up to and including
22 Day 60 of non-compliance;
23 C. \$3,000.00 per day for Day 61 and beyond of non-
24 compliance.

25 Such payments shall be made on demand by the United States and in
26 accordance with this Consent Decree.

27 36. Any disputes concerning the amount of Stipulated
28 Penalties, or the underlying violation that gives rise to the
Stipulated Penalties, that cannot be resolved by the parties
pursuant to the Dispute Resolution provisions in Section VI above

1 and/or the Force Majeure provisions in Section VII above shall be
2 resolved upon motion to this Court as provided in Section VI
3 above.

4 37. The filing of a motion requesting that the Court
5 resolve a dispute shall stay Defendants' obligation to pay any
6 Stipulated Penalties with respect to the disputed matter pending
7 resolution of the dispute. Notwithstanding the stay of payment,
8 Stipulated Penalties shall continue to accrue from the first day
9 of any failure or refusal to comply with any term or condition of
10 this Consent Decree. Unless otherwise provided for in Paragraph
11 38 below, in the event that Defendants do not prevail on the
12 disputed issue, Stipulated Penalties shall be paid by Defendants
13 as provided in this Section.

14 38. To the extent Defendants demonstrate to the Court that
15 a delay or other non-compliance was due to a Force Majeure event
16 as defined in Paragraph 30 above or otherwise prevail on the
17 disputed issue, no Stipulated Penalties for such delay or alleged
18 non-compliance shall be due.

19 39. In the event that a Stipulated Penalty payment is
20 applicable and not paid on time as provided for in this Consent
21 Decree, interest on due but unpaid amounts will be charged in
22 accordance with the statutory judgment interest rate provided for
23 in 28 U.S.C. § 1961. The interest shall be computed daily from
24 the date the payment is due until the date the payment is made.
25 The interest shall be compounded annually.

26 40. Defendants shall make any payment of a Stipulated
27 Penalty by FedWire Electronic Funds Transfer ("EFT" or wire
28 transfer) to the U.S. Department of Justice account in accordance

1 with current electronic funds transfer procedures, referencing
2 U.S.A.O. file number 2000V01872, EPA Region IX and the DOJ case
3 number 90-5-1-1-05744. Payment shall be made in accordance with
4 instructions provided to the Defendants by the Financial
5 Litigation Unit of the United States Attorney's Office for the
6 Central District of California. Any payments received by the
7 Department of Justice after 4:00 P.M. (Eastern Time) will be
8 credited on the next business day. Further, upon payment of any
9 Stipulated Penalties, Defendants shall notify EPA and the United
10 States Department of Justice in writing, at the addresses
11 specified in Section IX below.

12 **IX. ADDRESSES**

13 41. All notices and communications required under this
14 Consent Decree shall be made to the parties through each of the
15 following persons and addresses:

16 A. TO EPA:

17 Julia Jackson
18 Assistant Regional Counsel
19 United States Environmental Protection Agency
20 Region IX, ORC-2
75 Hawthorne Street
San Francisco, CA 94105

21 Robert Leidy
22 Wetlands Regulatory Office
23 United States Environmental Protection Agency
Region IX, WTR-8
75 Hawthorne Street
San Francisco, CA 94105

24 B. TO THE UNITED STATES DEPARTMENT OF JUSTICE:

25 Lily N. Chinn
26 Andrew J. Doyle
27 Paul D. Tanaka
Environmental Defense Section
28 Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 23986
Washington, D.C. 20026-3986

1 C. TO DEFENDANTS:

2 Barry M. Hartman
3 Kirkpatrick & Lockhart Nicholson Graham
4 1800 Massachusetts Ave. N.W.
Washington, DC 20036-1221

5 Suzanne Henry
6 Kirkpatrick & Lockhart Nicholson Graham
7 10100 Santa Monica Boulevard
Seventh Floor
Los Angeles, CA 90067

8 Peter Adam
9 Adam Bros. Farming, Inc.
P.O. Box 5987
Santa Maria, CA 93456

10 Richard Adam
11 Iceberg Holdings, L.P.
12 c/o Chern & Brenneman
625 E Chapel St
Santa Maria, CA 93454-4521

13 **X. COSTS OF SUIT**

14 42. Each party to this Consent Decree shall bear its own
15 costs and attorneys' fees in this action.

16 **XI. PUBLIC COMMENT**

17 43. The parties acknowledge that after the lodging and
18 before the entry of this Consent Decree, final approval by the
19 United States is subject to the requirements of 28 C.F.R. § 50.7,
20 which provides for public notice and comment. The United States
21 reserves the right to withhold or withdraw its consent to the
22 entry of this Consent Decree if the comments received disclose
23 facts which lead the United States to conclude that the proposed
24 judgment is inappropriate, improper, or inadequate. The
25 Defendants agree not to withdraw from, oppose entry of, or to
26 challenge any provision of this Consent Decree, unless the United
27 States has notified the Defendants in writing that it no longer
28 supports entry of the Consent Decree or seeks any changes in the

1 Consent Decree.

2 **XII. CONTINUING JURISDICTION OF THE COURT**

3 44. This Court shall retain jurisdiction over this action
4 in order to enforce or modify the Consent Decree consistent with
5 applicable law or to resolve all disputes arising hereunder as
6 may be necessary or appropriate for construction or execution of
7 this Consent Decree. During the pendency of the Consent Decree,
8 any party may apply to the Court for any relief necessary to
9 construe or effectuate the Consent Decree.

10 **XIII. MODIFICATION**

11 45. Upon its entry by the Court, this Consent Decree shall
12 have the force and effect of a final judgment. Any modification
13 of this Consent Decree shall be in writing, and shall not take
14 effect unless signed by both the United States and the Defendants
15 and approved by the Court.

16 **XIV. TERMINATION**

17 46. This Consent Decree may be terminated by either of the
18 following:

19 A. Defendants and the United States may at any time
20 make a joint motion to the Court for termination of this Consent
21 Decree or any portion of it; or

22 B. Defendants may make a unilateral motion to the Court
23 to terminate this Consent Decree upon the following conditions:

24 1. Defendants have obtained and maintained
25 compliance with all provisions of this Consent Decree
26 and the CWA for twelve (12) consecutive months;

27 2. Defendants have paid all penalties and other
28 monetary obligations hereunder and no penalties or

1 other monetary obligations are outstanding or owed to
2 the United States; and

3 3. Defendants have certified compliance with
4 subparagraphs 1 and 2 above to the Court and the United
5 States in the unilateral motion.

6 If, within forty-five (45) days of receiving such unilateral
7 motion from the Defendants, the United States has not contested
8 in writing that such compliance has been achieved, the motion to
9 terminate shall be granted. If the United States disputes
10 Defendants' full compliance, this Consent Decree shall remain in
11 effect pending resolution of the dispute by the parties or the
12 Court.

13 47. Notwithstanding the termination of this
14 Consent Decree, conditions applicable to the Restoration and
15 Preservation Area set forth in Appendix A shall continue in
16 perpetuity and shall run with the land.

17 **XV. DISMISSAL OF ACTION IN COURT OF FEDERAL CLAIMS.**

18 48. Within 30 days of entry of this Consent Decree,
19 Defendants shall dismiss with prejudice any claims they brought
20 or could have brought in Adam Bros. Farming, Inc. v. United
21 States, Court of Federal Claims, No. 00-522L, including any
22 claims they may have had for attorneys' fees or costs in
23 connection with that action.


24 IT IS SO ORDERED.

25 Dated and entered this ____ day of _____, 2005.

26
27
28 United States District Judge
Hon. Christina A. Snyder

1 FOR THE UNITED STATES:

2 THOMAS L. SANSONETTI
3 Assistant Attorney General
4 Environment and Natural Resources Division

5 
6 LILY N. CHINN
7 ANDREW J. DOYLE
8 PAUL D. TANAKA
9 United States Department of Justice
10 Environment and Natural Resources Division
11 Environmental Defense Section
12 P.O. Box 23986
13 Washington, D.C. 20026-3986
14 Telephone: (202) 514-2219
15 Facsimile: (202) 514-8865

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Dated: Feb. 23, 2005

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3 Wayne Nastri for

THOMAS V. SKINNER
4 Acting Assistant Administrator for
Enforcement and Compliance Assurance
5 U.S. Environmental Protection Agency
Washington, D.C. 20460
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8 Dated: 2/23/05
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13 WAYNE NASTRI
14 Regional Administrator
U.S. Environmental Protection Agency Region IX
15 75 Hawthorne St.
San Francisco, CA 94105
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18 Dated: _____
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4 THOMAS V. SKINNER
5 Acting Assistant Administrator for
6 Enforcement and Compliance Assurance
7 U.S. Environmental Protection Agency
8 Washington, D.C. 20460
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13 Dated: _____
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Wayne NASTRI
Regional Administrator
U.S. Environmental Protection Agency Region IX
75 Hawthorne St.
San Francisco, CA 94105

Dated: 2/23/2015

1 FOR DEFENDANTS:

2 
3 BARRY M. HARTMAN
4 SUZANNE HENRY

5 Kirkpatrick & Lockhart Nicholson Graham, LLP
6 1800 Massachusetts Ave. N.W.
7 Washington, DC 20036-1221
8 Telephone: (202) 778-9000
9 Facsimile: (202) 778-9100

10 Dated: Feb. 23, 2005

11 ADAM BROS. FARMING, INC. and PETER ADAM, Individually

12 By: 

13 PETER ADAM, Vice-President

14 Dated: Feb. 22, 2005

15 ICEBERG HOLDINGS, LP and RICHARD ADAM, Individually

16 By: 

17 RICHARD ADAM, General Partner

18 Dated: 2-22-05

19 By: 

20 KIERAN ADAM

21 Dated: 2/22/05

22 By: 

23 DOMINIC ADAM

24 Dated: 2-22-05

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1 approval from either EPA or the Corps of Engineers unless
2 otherwise specifically provided for in any of subparagraphs (a)
3 through (g):

4 (a) Willows may be removed from the stream beds in
5 the Preservation Area as follows: willows may be removed from no
6 more than approximately 50 percent of the streambed width (as
7 measured from toe of bank to toe of bank) at any location; any
8 willows removed must only be cut above the roots and removed
9 without the use of mechanized equipment, except that a chainsaw
10 may be used to cut the willows above the roots; such willows may
11 be replanted on the banks of the Preservation Area.

12 (b) Defendants may install drainage structures within
13 the Preservation Area adequate to effect the removal of excess
14 soil moisture from croplands outside the Preservation Area,
15 provided that installation of such structures occurs in a manner
16 that avoids discharges to waters of the United States. Such
17 structures may be covered with upland materials. Drainage
18 structure outlets shall be designed and installed to reduce
19 erosion into the Preservation Area. Stormwater discharges and
20 return flows from irrigated agriculture may be discharged through
21 the drainage structures.

22 (c) Defendants may remove accumulated sediment and
23 debris from the stream beds (from toe of bank to toe of bank) in
24 the Preservation Area, provided that Defendants avoid to the
25 maximum extent possible the stream banks and vegetation. In
26 locations where the channels are less than 30 feet wide as
27 measured from top of bank to top of bank, all excavation of
28 sediment and debris must occur from the banks, and no equipment

1 may be driven into the stream beds. In locations where the
2 channels are more than 30 feet wide as measured from top of bank
3 to top of bank, an excavator or front-end loader may be driven
4 into the stream bed to excavate materials, if necessary. All
5 preservation work carried out pursuant to this paragraph shall be
6 done in such manner as to minimize impacts to the extent
7 practicable to other features of the Preservation Area, including
8 willows planted in accordance with subparagraph (a), and any
9 material removed must be placed outside the Preservation Area.

10 (d) Defendants may restore the existing erosion area
11 (labeled "Erosion Area" on Exhibit 1) to the surveyed lines shown
12 on Exhibit 1. The restored area shall be filled with rock spoil
13 and soil from uplands within the "Erosion Area."

14 (e) In addition to the activities described in
15 subparagraph (a) through (d), and without limiting the scope of
16 authorized activities under subparagraph (a) through (d),
17 Defendants may engage in the following maintenance activities in
18 the Preservation Area:

19 (i) If altered by a storm, flood, or other
20 discrete event, the banks of the Preservation Area may be
21 restored to their surveyed boundaries, as shown on Exhibit 1,
22 within six months of the end of the event. If more than six
23 months have passed since the end of the event, the United States
24 Army Corps of Engineers must be notified prior to any discharge
25 and the terms and conditions of Clean Water Act Nationwide Permit
26 3 (or any comparable nationwide permit that subsequently replaces
27 Nationwide Permit 3) shall apply;

1 (ii) Drainage structures conveying water into the
2 Preservation Area may be maintained pursuant to the terms and
3 conditions set forth in Clean Water Act Nationwide Permit 3 (or
4 any comparable nationwide permit that subsequently replaces
5 Nationwide Permit 3);

6 (iii) Accumulated sediments and debris in the
7 vicinity of, and within, existing structures (e.g., bridges,
8 culverted road crossings, water intake structures, etc.) may be
9 removed pursuant to the terms and conditions set forth in Clean
10 Water Act Nationwide Permit 3 (or any comparable nationwide
11 permit that subsequently replaces Nationwide Permit 3); and

12 (iv) Maintenance, including emergency
13 reconstruction of recently damaged parts, of currently
14 serviceable structures such as dikes, dams, levees, groins,
15 riprap, breakwaters, causeways, bridge abutments or approaches,
16 and transportation structures, may occur pursuant to the terms
17 and conditions set forth in 33 C.F.R. § 323.4(a)(2).

18 (f) Defendants may construct up to six crossings of
19 the Preservation Area, provided that any such crossing shall be
20 constructed to prevent the restriction of expected flood flows in
21 the Preservation Area and to prevent the placement of dredged or
22 fill material into the Preservation Area. Defendants must obtain
23 permission from EPA before constructing more than six crossings.

24 (g) Defendants may undertake additional activities in
25 the Preservation Area consistent with the purpose of this
26 Restoration and Preservation Plan and pursuant to the terms and
27 conditions of an individual permit granted by the United States
28 Army Corps of Engineers.

1 4. Nothing in this Restoration and Preservation Plan shall
2 be construed as imposing obligations on Defendants not otherwise
3 required by law to address the impacts of natural occurrences on
4 the Preservation Area (including floods, rainstorms, earthquakes
5 or other natural phenomena) regardless of their effects on the
6 Preservation Area.

7 5. Nothing in this Restoration and Preservation Plan shall
8 be construed as imposing obligations on Defendants not otherwise
9 required by law to prevent or take action to prevent any third
10 party from taking action off the Site that may adversely impact
11 the Preservation Area (e.g., if the offsite source of water
12 flowing through the Preservation Area is reduced, altered or
13 eliminated by a third party, which has an adverse impact on the
14 Preservation Area).

15 6. Farming activities on the Site, including but not
16 limited to the use of pesticides, herbicides, fertilizers and
17 irrigation water, shall be designed to prevent to the extent
18 practicable adverse impacts to the Preservation Area.

19 7. Any activity undertaken by Defendants outside the
20 Preservation Area shall be undertaken in a manner that avoids the
21 encroachment of trucks, tractors, bulldozers, or other equipment
22 into or within the Preservation Area.

23 8. Any fill used adjacent to but outside the Preservation
24 Area (e.g., to construct levees) shall be stabilized and
25 maintained during and following construction to prevent erosion
26 into the Preservation Area consistent with best management
27 practices.

Exhibit 1 to Appendix A

Survey of Restoration and Preservation Area

APPENDIX B

Off-Site Mitigation

Defendants shall, in accordance with the schedule set forth in Paragraph 22 of the Consent Decree, pay nine hundred and fifteen thousand dollars (\$915,000.00) to The Land Conservancy of San Luis Obispo County ("Conservancy") for projects that include acquisition and/or restoration at the following properties identified by the Conservancy^{1/}:

(1) **Black Lake Canyon Mouth**. This project involves the acquisition and restoration of a 12-acre property located at the westerly terminus of Black Lake Canyon adjacent to the Guadalupe-Nipomo Dunes wetlands complex, the largest coastal dune ecosystem in the Western United States. Black Lake Canyon has a critical role in the greater wetlands complex due to its hydrologic influence, its role as an important habitat migration corridor, and as a climax area for coastal dune vegetation succession. The property contains a mosaic of regionally unique wetlands and uplands and functions as a refuge for wildlife and endangered plants. The property contains degraded, but restorable, maritime chaparral vegetation, as well as the Marsh Sandwort, a listed endangered plant species.

(2) **Dana Adobe Riparian Project**. This project will involve the fee simple acquisition of a 40-acre property which

^{1/} Conservancy planning documents include: *Acquisition, Restoration, and Community Participation at the Mouth of Black Lake Canyon: A Proposal to Implement Complete Conservation* (July 2004) and *The Nipomo Creek Watershed Program: Final Report of Concept Recommendations for Short-Term Project Implementation* (November 2004).

1 immediately surrounds the historic Dana Adobe. The project
2 will also include acquisition and restoration of nearly .75-
3 mile of Nipomo Creek (as well as the confluence area with
4 the Santa Maria River) and adjacent riparian wetland and
5 uplands. With some exceptions, the riparian resources on the
6 property are in excellent condition, exhibiting a good mix
7 of native species and a healthy canopy cover. The property
8 represents one of the longest intact stretches of Nipomo
9 Creek in a single ownership in the entire watershed.

10 If acquisition of all or a portion of these properties cannot be
11 carried out by the Conservancy as outlined above, EPA shall work
12 with the Conservancy to identify suitable alternative properties
13 for acquisition or restoration projects to mitigate impacts to
14 the disputed area.